IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.774 of 2006

Loganathan @ Logu ... Petitioner/Detenu

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Coimbatore City, Coimbatore. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records relevant to the order passed by the second respondent in his proceedings C.No.01/G/IS/2006 dated 23.3.2006 and quash the same and produce the detenu Loganathan @ Logu who is now detained at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.S.Selvathirumurugan
for Ms.A.Vasanthi

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, by name Loganathan @ Logu, who is detained as a ''Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 23.03.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner submitted that, in view of the fact that the detaining authority has passed two orders amending the detention order on two occasions, viz., 29.03.2006 and 01.04.2006, it is but proper on the part of the approving authority, namely, the State Government to advert both the amendments, apply their mind and give the seal of approval. According to the learned counsel for the petitioner, the approval order of the Government dated 03.04.2006 does not reflect the two amendments made by the detaining authority on 29.03.2006 and 01.04.2006. In such circumstances, the detention order is liable to be quashed. He also pointed out that in the absence of such reference in the approval order dated 03.04.2006, it is presumed that both the amendments made on 29.03.2006 and 01.04.2006 were not placed before the Government and on this ground also, the detention order is liable to be quashed.

4. In the light of the above said contention, we verified the relevant details. It is not in dispute that the detention order was passed by the second respondent - the Commissioner of Police, Coimbatore City on 23.03.2006. The records also show that even on the next day i.e., on 24.03.2006, he forwarded all the papers to the Government for their approval. The detention order was approved by the Government on 03.04.2006. It is true that till the approval order by the Government, the detaining authority is empowered to make necessary amendment depending on the need. Further, as rightly pointed out by the learned counsel for the petitioner, first of all, there is no intimation about the first amendment made on 29.03.2006. When the second amendment was made on 01.04.2006, there was a reference to the first amendment dated 29.03.2006. We perused the approval by the Government dated 03.04.2006, here again as rightly pointed out, absolutely there is no reference to any of these amendments made on 29.03.2006 and 01.04.2006 by the detaining authority. The approval order dated 03.04.2006 merely refers only the detention order dated 23.03.2006 and there is no reference at all to the subsequent amendment orders dated 29.03.2006 and 01.04.2006. It is not in dispute that the detention order passed by the detaining authority has to be approved by the Government within a period of twelve days, failing which the detention order has no force at all. The amendments made by the detaining authority relate his awareness as to the imminent possibility of the detenu coming out on bail. Though the detaining authority is entitled to amend, modify the original order, we are of the view that inasmuch as the detention order has to be approved by the Government, it is but proper that both the amendments have to be placed before the Government. We are also of the view that it is the duty of the Government to consider the two amendments made and give its seal of approval as observed earlier. The approval order dated 03.04.2006 does not refer the two amendments made by the detaining authority. We are satisfied that there is no indication that the two amendments were placed before the Government and there is no approval by the Government in respect of these two amendments. We are of

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the view that when the detaining authority alters his earlier decision by way of an amendment, that has to be specifically approved by the Government. In the absence of the same, we hold that the detention order is vitiated. Under these circumstances, the detention order is liable to the quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

1.The Secretary to Government,State of Tamil Nadu,
Prohibition and Excise Department, Fort St. George, Chennai-9.

2.The Commissioner of Police, Coimbatore City, Coimbatore.

3. The Superintendent, Central Prison, Coimbatore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5.The Public Prosecutor, High Court, Madras.

+ 1 CC To Mrs.A.Vasanthi, Advocate SR NO.48315

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